IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7489 of 2007

Date of Decision: 14.12.2007

Om Parkash Walecha

..Petitioner.

Vs.

State of Haryana and others

..Respondents.

CORAM : HON'BLE MR.JUSTICE M.M.KUMAR

HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

* * *

Present: Mr.Vikas Awasthi, Advocate for the petitioner.

Mr.S.K.Garg Narwana, Addl.AG Haryana for the respondents.

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Rakesh Kumar Jain, J.

The point for consideration in this petition is as to whether a Director of a Company can be made personally liable for the amount due from the Company for the arrears of state and central sales tax?

The petitioner is the Director of M/s Agni Wire Industries Pvt. Ltd. Respondent No.2 served a show cause notice dated 22.12.2005 (Annexure P-1) to the petitioner to recover an amount of Rs.22,25,036.00/- on account of central sales tax arrears due from the Company. A similar notice was earlier served upon both the petitioner and his son, who was also on the Board of Directors, which is attached as Annexure P-3.

The petitioner has challenged the notices Annexures P-1 and P-3 on the issue of jurisdiction of the respondents to demand and recover arrears of central sales tax personally from him as a Director of the Company on the ground that neither he is an assessee nor a defaulter of the

sales tax or the central sales tax and there is no provision in the statute which authorizes recovery of arrears due from the company by proceeding against its Director either in the Haryana General Sales Tax Act, 1973 or under the Central Sales Tax Act, 1956. Therefore, the action much less the impugned notices Annexures P/1 and P/3 are illegal, arbitrary, whimsical and against the well settled law.

In the written statement filed by respondent No.3 on behalf of respondent No.1 as well, it was pleaded that the recovery certificate has been issued to the petitioner for the arrears of sales tax under Central Sales Tax Act, 1956 and the recovery of the aforesaid arrears can be effected from the Director of the Company in view of Section 18 of the Central Sales Tax Act, 1956. (for short `the Act'). In this regard Section 18 of the Act was also reproduced in the written statement which reads as under :

> "Section 18 of Central Sales Tax Act.
>
> (Liability of Directors of Private Company in Liquidation)
>
> Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956). When any private company is wound up after the commencement of this act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally be liable for the payment of such tax unless he proves that the non recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

The petitioner filed replication to the written statement. It is

categorically mentioned that the Company is still not wound up or formally liquidated. The respondents however, did not controvert this fact.

Counsel for the parties have been heard at length.

Learned counsel for the petitioner vehemently argued that the point in issue is fully covered by Single Bench judgments in the cases of **Lalita Shivaram Ubhaykar v. Commercial Tax Officer, Banglore 35 STC 267** and **Ramachandran v. State of Kerala and others 55 STC 209** and two Division Bench judgments of this Court in the case of **Suneet Khurana Vs. Asstt.Collector etc. (1997) 10 Punjab and Haryana Taxes (PHT) 495 (P&H)** as well as **Mukesh Gupta Vs. State of Haryana (1996) Punjab and Haryana Taxes PHT 326 (P&H),** wherein it has been settled that no recovery either of Haryana General Sales Tax or Central Sales Tax could be effected personally from the Director in respect of the liability of the Company.

As against the above, learned counsel for the respondent placed reliance upon Section 18 of the Act in order to convass that when any private company is wound up after the commencement of this Act and any tax assessed under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a Director of the Pvt. Company at any time during the period for which tax is due shall be jointly and severally liable for the payment of such taxes.

We are afraid that the provisions quoted by the learned counsel for the respondents are not attracted to the controversy in hand because as a matter of fact the company is still not wound up or formally liquidated. Besides the above, no other argument has been raised by the learned counsel for the respondents nor the law laid down by the Division Bench in the

cases of **Suneet Khurana and Mukesh Gupta (supra)** has been controverted by citing any authority to the contrary.

Therefore, we are in agreement with the contentions raised by the learned counsel for the petitioner and are of the view that the notices Annexures P/1 and P/3 are not only illegal but also arbitrary and whimsical as the same have been issued on 22.12.2005 in spite of the fact that the law has been settled by this Court in the cases of Suneet Khurana on 3.9.1997 and Mukesh Gupta on 18.7.1996.

The writ petition is thus, allowed and consequently, notices Annexures P/1 and P/3 are hereby quashed. In the peculiar facts and circumstances of this case, since the impugned notices were issued without any statutory provision, the respondents are burdened with costs of Rs.10,000/-.

(Rakesh Kumar Jain)
Judge

(M.M.Kumar)
Judge

14.12.2007
Meenu